

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBERT LEE and JENNIFER LEE,

Plaintiffs,

v.

UNITED HEALTHCARE SERVICES,
INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

C.A. NO. 4:22-cv-3034

NOTICE OF REMOVAL

Defendant United HealthCare Services, Inc. (“United”), for the purpose only of removing this case to the United States District Court for the Southern District of Texas, states:

1. **State Court Action.** This is an action filed by Plaintiffs Robert and Jennifer Lee in the Justice Court, Precinct 1, Place 2 of Harris County, Texas on 457th District Court of Montgomery County, Texas on August 3, 2022 (the “State Court Action”). Plaintiffs allege the wrongful “nonpayment or underpayment of claims” under a medical plan . [Pet. ¶ 1.]

2. **Preemption by Federal Law.** As a matter of law, Plaintiffs’ claims are completely preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1144, which is a law of the United States. *See Aetna Health, Inc. v. Davila*, 542 U.S. 200 (2004); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987); *Salzer v. SSM Health Care of Oklahoma, Inc.*, 762 F.3d 1130, 1134 (10th Cir. 2014).

3. **Federal Question: ERISA.** This action is removable under 28 U.S.C. § 1331 and 29 U.S.C. § 1132 on the basis of a federal question. Specifically, a federal question exists where a plaintiff sues to recover benefits under an ERISA plan. *See Lone Star OB/GYN Assocs. v. Aetna Health Inc.*, 579 F.3d 525, 529 (5th Cir. 2009). A plan is governed by ERISA where it is established or maintained by an employer with the intent to benefit its qualified employees. *See House v. Am. United Life Ins. Co.*, 499 F.3d 443, 448 (5th Cir. 2007).

4. Here, Plaintiffs have alleged that United has failed to pay and/or underpaid medical benefits to which they were entitled pursuant to under their “policy.” [Pet. ¶ 1.] The “policy” to which Plaintiffs refer is the Shell Oil Company Plan (the “Plan”). [See Ex. 1 ¶ 3.] The Plan is a self-funded employer-sponsored benefit plan that Shell Oil Company sponsors and provides to its eligible employees. [Ex. 1 ¶ 3; Ex. A.] United serves as the claim administrator for certain medical, surgical and diagnostic services offered under the Plan. [Ex. 1 ¶ 3; Ex. A.] Plaintiffs were eligible for family medical coverage under the Plan during the timeframe at issue, subject to the terms and conditions thereof. [Ex. 1 ¶ 4.]

5. As an initial matter, the Plan is governed by ERISA because it was established and is maintained by Shell Oil Company for the benefit of its employees. [See Ex. 1 ¶ 4.] The Plan sets forth, among other things, the intended benefits, eligibility requirements, procedure for submitting claims, and statement of rights under ERISA. [See generally, Ex. 1-A.] Moreover, Plaintiffs claims are clearly governed by ERISA because their attempt to recover for alleged “nonpayment or underpayment of claims” by United under the Plan fall squarely within the types of actions ERISA was designed to cover. *See*,

e.g., Lone Star, 579 F.3d at 530 (holding that any claim to “recover benefits,” “enforce [] rights,” or “clarify [] rights to future benefits” under an ERISA plan is preempted by ERISA). Therefore, jurisdiction is proper in this court under 28 U.S.C. § 1331 and 29 U.S.C. § 1132.

6. **State Court Documents Attached.** Pursuant to the Federal Rules of Civil Procedure, a copy of the state court docket sheet and all documents filed in the state court action, arranged in chronological order, are attached as Exhibit 2. These documents constitute the only pleadings, process, or orders filed in the state court or received by Defendants. Further, a List of Counsel and Parties is attached as Exhibit 3.

7. **Notice.** United shall give notice of filing of the Notice of Removal to all parties of record pursuant to 28 U.S.C. § 1446(d) and will file with the state court a notice of filing this Notice of Removal.

8. **Prayer.** Wherefore, Defendant prays that the United States District Court for the Southern District of Texas accept this Notice of Removal, that it assumes jurisdiction of this cause, that it issue such further orders and processes as may be necessary to bring before it all parties necessary for the trial hereof, and that it grant such other and further relief as may be necessary.

Dated: September 7, 2022

Respectfully submitted,

By: /s/ Andrew G. Jubinsky

Andrew G. Jubinsky

State Bar No. 11043000

Fed ID No. 8603

andy.jubinsky@figdav.com

Amber D. Reece

State Bar No. 24079892

Fed ID No. 2695252

amber.reece@figdav.com

Dwayne I. Lewis, II

Texas Bar No. 24097996

Fed ID No. 3690376

dwayne.lewis@figdav.com

FIGARI + DAVENPORT, LLP

901 Main Street, Suite 3400

Dallas, Texas 75202

(214) 939-2000

(214) 939-2090 (Fax)

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties who have appeared and registered with CM/ECF.

Robert Lee

Jennifer Lee

10401 Town & Country Way #401

Houston, Texas 77024

jdlee.lady@gmail.com

/s/ Andrew G. Jubinsky

Andrew G. Jubinsky